

LEMIRE JOHNSON, LLC
Attorneys at Law

2534 Route 9, P.O. Box 2485, Malta, NY 12040
518.899.5700 ~ 518.793.9005
Fax 518.899.5487
www.lemirejohnsonlaw.com

EMO

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 11/29/11

November 22, 2011

VIA Facsimile Only

Hon. Cathy Seibel, USDCJ
USDC – Southern District of New York
Federal Building and U.S. Courthouse
300 Quarropas Street
White Plains, New York 10601

Pre-motion conference to be held on 11/4/12 at 10 AM
Opposing ~~Counsel~~ ^{party} to state position (by letter not to exceed 3 pages) in writing one week in advance.

So ordered.

Cathy Seibel
Cathy Seibel, U.S.D.J.

Re: *Ahmad v. E. Ramapo Central S.D., et al.*
Civil Case No.: 7:-09-cv-01440 (CS-PED)

Dated: 11/23/11

Dear Honorable Judge Seibel:

We write today on behalf of Defendant, the East Ramapo Central School District ("ERCSD"), to request a pre-motion conference in accordance with the Court's individual rules of practice, Rule 2A. ERCSD seeks permission to file a motion with respect to certain spoliation and sanctions issues relating to discovery in this matter. The general basis for this motion is set forth below.

It is Defendant ERCSD's position that certain evidence, upon which we understand Plaintiff intends to rely during this litigation, including in opposition to ERCSD's summary judgment motion, should not be considered by the Court. This evidence includes secret recordings of conversations made by Plaintiff of certain ERCSD employees, as well as, four purported letters of complaint that Plaintiff claims were provided to, at least, the Principal of Ramapo High School, prior to his termination.

Regarding the recordings, the basis for excluding the copies of CDs containing the recordings is that Plaintiff did not maintain either the original machine (the "micro-recorder") used to make the recordings (containing the original digital file) or the original files from the micro-recorder that were allegedly downloaded/saved onto his home computer. Despite being advised during his first deposition to maintain the micro-recording device, at Plaintiff's second deposition several months later he claimed that the micro-recording device had been lost. With respect to the original files that were apparently saved to Plaintiff's home computer, Plaintiff claims that those were also lost when his computer hard drive was allegedly stolen out of his car on the way to drop off the hard drive at his attorney's office in Brooklyn, N.Y. The fact is, Plaintiff had possession of relevant information (the micro-recorder and the original digital copies on his home computer) after the lawsuit was commenced, but admittedly failed to preserve such materials; thus, he should be prevented from affirmatively using these secret recordings to support his claims.

LEMIRE JOHNSON, LLC

Ahmad v. ERCSD, et al. 04 Civ. 1440 (CS/PED))

November 22, 2011

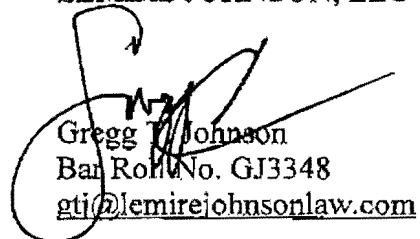
Page 2

Similarly, the four letter complaints allegedly made to the Ramapo High School Principal should also be excluded from the Court's consideration. Although Plaintiff alleges that these written complaints, alleging discrimination against him, were given to the Ramapo High School Principal, there is absolutely no record of these documents in ERCSD's files. Importantly, none of these letters was ever received by any ERCSD employee and they never surfaced until after the documents were provided to counsel after Plaintiff and his prior counsel reviewed the ERCSD's response to his EEOC complaint. While Plaintiff submitted numerous written complaints, particularly during his second year at Ramapo High School, none of the earlier complaints addresses the issues allegedly raised in these suspicious four letters. This includes other complaints made on the exact same day of at least one of the alleged complaints. Finally, each of these four letters appears to have been executed at the same time and are the same format, which is substantially different from all of Plaintiff's other numerous complaints. After ERCSD's counsel learned of these documents through Plaintiff's production, counsel attempted for many months to gain access to Plaintiff's home computer hard drive, where these complaints were allegedly created. Despite counsel's continued efforts, Plaintiff consistently refused to provide the hard drive so that an independent examination could be conducted which would show when these documents were created. Shocking, when Plaintiff finally decided to allow access to his hard drive (and while he was purportedly bringing the hard drive to his former counsel's offices), Plaintiff claims that his car was broken into in Brooklyn, N.Y. and the alleged thieves stole his hard drive from the vehicle. ERCSD submits that this evidence, which is believed to have been fabricated after the fact, should not be considered by the Court in this action because there is no way to authenticate when the documents were actually created (and all of the record evidence, aside from Plaintiff's self-serving account, leads to the conclusion that the documents were *not* provided to anyone at ERCSD during Plaintiff's employment).

We are available at the Court's convenience to discuss this matter further. Thank you for your consideration of these requests.

Respectfully yours,

LEMIRE JOHNSON, LLC



Gregg T. Johnson
Bar Roll No. GJ3348
gtj@lemirejohnsonlaw.com

GTJ:lmg

cc: Lewis R. Silverman, Esq. at lrs@rutherfordchristie.com (via Electronic Mail Only)
Mushtaq Ahmad at NYmushtaq@aol.com (via Electronic & 1st Class Mail)

LEMIRE JOHNSON, LLC

Attorneys at Law

2534 Route 9, P.O. Box 2485, Malta, NY 12020
518.899.5700 ~ 518.793.9005
Fax 518.899.5487

FAX TRANSMITTAL COVER SHEET

DATE: November 22, 2011

PLEASE DELIVER THE FORTHCOMING PAGES TO:

ATTN: Hon. Cathy Seibel, U.S.D.C.J.

FROM: Gregg T. Johnson, Esq. (GJ3348)

RE: Mushtaq Ahmad v. East Ramapo Central School District, et al.
Civil Case No.: 09 Civ. 1440

FAX NUMBER: 914-390-4278

NUMBER OF PAGES TO FOLLOW COVER SHEET: 2

**IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL (518) 899-5700 AND
ASK FOR THE OPERATOR. THANK YOU.**

COMMENTS/SPECIAL INSTRUCTIONS:

This correspondence is simultaneously being emailed to Plaintiff and
co-defense counsel; and a copy will also be sent to Plaintiff via 1st class mail.

CONFIDENTIALITY NOTE: The information contained in this facsimile message
is legally privileged and confidential information intended only for the use of the
individual or entity named above. If the reader of this message is not the intended
recipient, you are hereby notified that any dissemination, distribution or copy of
this telecopy is strictly prohibited. If you have received this telecopy in error please
immediately notify the operator by telephone and return the original message to us
at the address above via the United States Postal Service. Thank you.